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Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai

Addendum

Mission to Kazakhstan* **

Summary

The Special Rapporteur on the rights to freedom of peaceful assembly and of association carried out an official visit to Kazakhstan from 19 to 27 January 2015 to assess the situation of freedom of peaceful assembly and of association in the country, upon the Government's invitation.

Following an introductory section, sections II and III contain a series of good practices and remaining challenges in relation to the enjoyment of the rights to freedom of association for political parties, non-profit organizations, trade unions and religious associations and to freedom of peaceful assembly.

Finally, the Special Rapporteur formulates his recommendations to overcome the challenges he identified.

* The summary of the present report is circulated in all official languages. The report itself, contained in the annex to the summary, is circulated in the language of submission and Russian only.

** Late submission

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Annex

[English and Russian only]

Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, on his mission to Kazakhstan (19-27 January 2015)

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I. Introduction

1. Pursuant to Human Rights Council resolutions 15/21 and 24/5, the Special Rapporteur on the rights to freedom of peaceful assembly and of association visited Kazakhstan from 19 to 27 January 2015, at the invitation of the Government. The purpose of the visit was to assess the situation of freedom of peaceful assembly and of association in the country.

2. The Special Rapporteur would like to thank the Government for accommodating his requests for meetings and expresses sincere appreciation to all persons who took the time to meet with him in a spirit of constructive dialogue. The Special Rapporteur commends the Government for extending a standing invitation to all special procedures mandate holders and for having accommodated the visit of six special rapporteurs since July 2009. He considers it an expression of the Government's willingness and commitment to work jointly with the mechanisms of the Human Rights Council to strengthen the protection and promotion of all human rights, including the rights to freedom of peaceful assembly and of association. He takes this opportunity to thank the Government for responding in detail to the communications he has sent so far, as well as to a letter he sent after his visit.

3. The Special Rapporteur also expresses his gratitude to the Office of the United Nations Resident Coordinator in Kazakhstan and to the Regional Office for Central Asia of the Office of the United Nations High Commissioner for Human Rights (OHCHR), for its excellent support prior to and during the visit.

4. While in Kazakhstan, the Special Rapporteur travelled to Astana, Almaty, Aktau and Zhanaozen. He met with representatives from the executive, legislative and judicial branches in Astana and with regional and local authorities in Almaty, Aktau and Zhanaozen. He also met with representatives of the national human rights institution, international organizations, the diplomatic community and civil society organizations, and with survivors and victims of grievous human rights violations that occurred during the Zhanaozen crisis of December 2011. The Special Rapporteur thanks the Government of Kazakhstan for facilitating his visit with Vladimir Kozlov, the jailed leader of the public association People's Party Alga!, who is currently serving a jail term of seven and a half years.

A. Historical and political background

5. Kazakhstan has been independent for nearly 24 years and has made considerable economic progress during that time. The level of economic growth and infrastructural development, including the construction of a new capital, has made Kazakhstan an important player in the region and globally. This admirable economic progress was achieved thanks to Kazakhstan's abundant natural resources, a remarkable mobilization of human resources and significant efforts to ensure stability in an ethnically and culturally diverse society. Today, Kazakhstan has ambitious international objectives, including a bid for a non-permanent seat on the Security Council for the period 2017-2018 and a proposal to host the 2022 Winter Olympic Games. The main goal of its national strategic plan, Strategy Kazakhstan 2050, is for the country to join the top 30 developed countries by the middle of the century.

6. Despite its apparent wealth and image as a prosperous and stable country, Kazakhstan faces a number of challenges. Socioeconomic inequalities remain and a number of human rights, especially the rights to freedom of peaceful assembly and of association, are not adequately enjoyed by all.

7. Since independence, President Nazarbayev has maintained firm control over political and economic affairs. He was elected as the first President of Kazakhstan in 1991 and has remained in power ever since, receiving 95.5 per cent of the votes with an 89.9 per cent turnout in the 2011 presidential elections. On 25 February 2015, following an initiative by the Council of the Assembly of People, supported by the Parliament, President Nazarbayev announced that an early presidential election would take place on 26 April 2015, instead of in December 2016 as originally scheduled. This left very limited time for the opposition to prepare.

8. The Special Rapporteur believes that Kazakhstan is at a crossroads. Its economic progress since independence has been impressive but the lack of corresponding advancements in the realm of other human rights renders this progress shaky. Although it may seem paradoxical, the true measure of a country's stability is its tolerance of peaceful questioning of the established order, that is, allowing outlets for peaceful dissent and political pluralism. Failure to create such outlets does not make the dissent go away; it only bottles it up in such a way that it may fester and explode as something much more violent than a street protest or reports of non-governmental organizations criticizing government policy.

9. During the visit, government representatives repeatedly stressed that stability and cohesion are integral aspects of Kazakh society, noting that the views of minorities — and of the nation as a whole — are represented in the Assembly of People of Kazakhstan. The Government of Kazakhstan should be praised for its preservation of stability and cohesion in a vast country composed of 140 ethnic and 17 religious groups. Nevertheless, the Special Rapporteur found that stability was often misused to wrongfully curtail the enjoyment of the rights to freedom of peaceful assembly and of association. He underlines that the protection of human rights and the maintenance of peace and harmony are two sides of the same coin and that are interrelated, mutually reinforcing and interdependent. He believes that the free exercise of the rights to peaceful assembly and of association provides authorities with unique insights into the challenges that people are facing. This is especially important for a nation such as Kazakhstan, which is young, large and placed in a relatively challenging and complex geopolitical context. There is no better way to understand the needs of people and no better check and balance for authorities.

B. Legal framework

10. Kazakhstan has ratified many international human rights instruments, including the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and its Optional Protocol, the International Convention for the Protection of All Persons from Enforced Disappearance and, in 2015, the Convention on the Rights of Persons with Disabilities, all of which contain provisions pertinent to the protection and promotion of the rights to freedom of peaceful assembly and of association. Kazakhstan has also ratified a number of International Labour Organization conventions, including the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Given the relatively short existence of Kazakhstan as an independent country, the commitment shown by the authorities to abide by international human rights law is commendable.

11. The Special Rapporteur welcomes the fact that the rights to freedom of peaceful assembly and of association are guaranteed in the Constitution, which also recognizes ideological and political diversity. He notes that the Constitution gives international treaties priority over domestic laws and allows them to be directly implemented. In theory, this allows courts to directly invoke, inter alia, articles 21 and 22 of the International Covenant on Civil and Political Rights in its judgements. He notes positively that the Constitution provides that the right to peaceful assembly may only be restricted by law in the interests of State security, public order and protection of health, rights and freedoms of other persons, which clearly suggests that freedom is the norm and limitations the exception, in accordance with international human rights law.

12. Despite these provisions, the Special Rapporteur is concerned that new laws have been adopted since the Zhanaozen crisis of 2011, in which at least 16 people were killed after government forces moved in on hundreds of oil workers protesting their conditions of employment, and used to curb the right to freedom of association. He is also concerned that, in the same period, participants in unsanctioned assemblies seem to have been increasingly subjected to intimidation, fines, imprisonment and administrative sanctions.

II. Freedom of association

13. Before discussing the issue of freedom of association proper, the Special Rapporteur would like to express serious concerns about an incident that occurred during his visit.

14. At the end of a meeting with members of civil society in Aktau on 24 January 2015, unknown individuals sitting in the back of a vehicle parked directly facing the entrance of the venue of the meeting were seen taking photographs of the Special Rapporteur's driver and of civil society representatives leaving the building. The equipment used and the manner in which the photographs were being taken left little doubt that the operation was carried out by secret police surveillance with the aim of instilling fear among activists.

15. The Special Rapporteur approached the individuals and demanded to know who they were and their purpose in taking the photographs, at which point they hurriedly drove off without responding. The Special Rapporteur made a formal complaint to the Head of the Mangystau Oblast Interior Department on the day of the incident. The next day, police informed the Special Rapporteur that a suspect had been apprehended and presented a purported confession from the person. The suspect, however, was not the same person that the Special Rapporteur had confronted in the parking lot.

16. The Special Rapporteur considers this incident to be a worrying episode illustrating both a lack of respect vis-à-vis those holding or perceived to be holding different views from the Government, and a sense of impunity by some officials.

17. The issue of reprisals against those cooperating with United Nations bodies and mechanisms, in accordance with Human Rights Council resolution 24/24, is taken extremely seriously by the Special Rapporteur. The incident in Aktau clearly illustrates that much more needs to be done to protect human rights defenders in Kazakhstan, particularly in the light of the country's candidacy for a non-permanent seat on the Security Council. An enabling environment for the development of civil society requires not only protection against acts of harassment and intimidation, but also proactive efforts to bring perpetrators of human rights violations to justice and positive measures to support those holding dissenting or minority views and opinions.

18. The Special Rapporteur notes that no other concern directly related to the visit has been brought to his attention since then, but he will continue to remain in touch with the civil society activists he met and will remain firm in his response to these issues.

A. Political parties

19. There is very limited space for the expression of dissenting political views in Kazakhstan. A web of policy, practice and perception contributes to a general environment where engaging in political activities is difficult, discouraging and sometimes dangerous. Dissent may be criminalized and critical political expression is often portrayed as threatening the stability of the State.

20. Kazakhstan amended its 1996 Law on Political Parties in 2002 and 2009. While the 2009 Law contained some improvements over the previous version, including a decrease in the number of members required to form a political party and the introduction of a provision allowing State registration of a political party even where there are errors in the party member lists, provided the errors do not affect the ultimate total number of party members required for State registration. However, much more needs to be done to ensure compliance with international standards.

21. The Law on Political Parties imposes onerous obligations prior to registration, including high initial membership requirements that prevent small parties from forming and extensive documentation that requires time and significant expense to collect. An initial group of no fewer than 1,000 founding members representing two thirds of the country's regions, a city with a national status and the capital, in total no fewer than 40,000 members, are required to form a political party.

22. A monitoring team from the Organization for Security and Cooperation in Europe described the most recent parliamentary elections in Kazakhstan, which were held in 2012, as not meeting the "fundamental principles of democratic elections", citing notably the "selective" deregistration of candidates and of a party list.[1] Although the ruling party, Nur Otan, and its predecessor, Otan, enjoys strong support from the population and has achieved major economic development since 1991, it has over the past two decades rarely left much room for dissenting or minority views. There are nine political parties, only three of which are represented in the Parliament. None is in a position to play the role of a true opposition party. For example, during the 2011 presidential elections, one candidate said that he had voted in favour of President Nazarbayev.

23. The Special Rapporteur is particularly concerned that the executive branch, through the Ministry of Justice, is responsible for registering political parties, since these entities will ultimately compete with it for power. The Law on Political Parties allows for perpetual extensions for the authorities to review a prospective party's application and does not set clear criteria to guide officials in charge of the registration process. While the authorities told the Special Rapporteur that individuals may use the court system to challenge registration decisions made by the Ministry, he observed that confidence in the independence of the judiciary was low. An independent body in charge of registering and regulating political parties is necessary to ensure transparency and accountability of State institutions.

24. Grounds allowing for the suspension or dissolution of a political party are another source of concern. In late December 2014, a court suspended the Communist Party, as the competent authority found a discrepancy in the party's member list.

25. On 1 January 2015, the new Criminal Code, the new Code on Administrative Offences and the new Code of Criminal Procedure entered into force. While some revisions represent a significant step forward towards strengthening of the rule of law in criminal proceedings, a series of other provisions pose serious risks of criminalizing and penalizing

[1] See www.osce.org/odihr/elections/89401?download=true.

legitimate activities of associations, including political parties. Of particular concern is article 174 of the Criminal Code, on incitement of social, national, family, racial, class or religious discord. The Code does not strictly define what is meant by "incitement of discord", which may leave the term open for arbitrary interpretation beyond the scope of articles 19 (3) and 20 of the International Covenant on Civil and Political Rights and article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination. Such a provision already existed under the previous Criminal Code, but the new provision increases the maximum penalty from 12 to 20 years in prison. In fact, this vague provision can be used against any opposition party that seeks, for instance, to mobilize workers, as inciting social discord against employers.

26. During his visit, the Special Rapporteur met with Vladimir Kozlov, the jailed leader of Alga!, who is serving a jail term of seven and a half years after being convicted of "inciting discord". Mr. Kozlov was arrested in January 2012 after he publicly expressed support for oil workers demonstrating in the city of Zhanaozen and denounced human rights violations in the aftermath of the December 2011 crisis. Mr. Kozlov has been involved in opposition political movements since 2000, when he joined the party Democratic Choice of Kazakhstan, which was dissolved by a court order in January 2005, disturbingly also on charges of political extremism, inciting social tension and threatening national security.

27. At the time of his conviction, Mr. Kozlov was in a seven-year struggle to register Alga!, the successor to Democratic Choice of Kazakhstan. The court judgement against Mr. Kozlov was subsequently used to ban Alga! — along with 34 non-State media outlets — on the grounds that they were "extremist". In fact, the only crime committed by those outlets appears to have been reporting on the situation in Zhanaozen.

28. During Mr. Kozlov's trial, an expert commissioned by the court found that Mr. Kozlov had incited social discord by allegedly distributing leaflets stating "Get up off your knees, Kazakhs, throw the tyrant and the thief off your neck!". The expert testified that this act set the protesters against their employers and State authorities because the information in the leaflet suggested that since in many Kazakh regions people lived in poor conditions, they might rise up in support of the oil workers. Mr. Kozlov's actions also allegedly contributed to a systematic breakdown of labour negotiations between employers and workers. Mr. Kozlov was presented as linked to opposition figure Mukhtar Ablyazov, currently in pretrial detention in France on embezzlement charges.

29. The Special Rapporteur is seriously concerned that Mr. Kozlov's ordinary political speech and association activities were deemed criminal incitement of social hatred. Indeed, Mr. Kozlov's case — particularly the fact that his conviction portrayed his legitimate and peaceful political activity as threatening the stability of the country — seems emblematic of a more general trend to marginalize political leaders voicing dissent. This heavy-handed approach to quashing political opposition is all the more surprising given that the Government of Kazakhstan enjoys significant popular legitimacy and approval.

30. The Special Rapporteur believes that article 174 of the new Criminal Code has had a powerful chilling effect on political activity and that it is also an ineffective and counterproductive way of fighting actual extremism. Dissolving political groups or prosecuting their representatives on the aforementioned vague grounds puts any opposition political party or its members that are keen to compete against the ruling party at risk of being the subject of such criminal offences as incitement to discord or "spreading false information" or "defamation".

31. The limited space for the expression of opposition views is exacerbated by opposition parties' limited access to the media, which is also subject to restrictions. Several independent newspapers have been closed down in recent months, including the well-

known newspaper *ADAM bol*, which covered political and human rights issues and was shut down by a court order in December 2014. The order came after *ADAM bol* published an interview with an opposition figure who called for military support to the Ukrainian army against separatists in Ukraine.

32. The Special Rapporteur is mindful that Kazakhstan is a young, vast and diverse country with unique challenges. However, he considers that its current approach to regulating political parties — and political opposition in general — quashes dissent and pluralism in a way that is harmful to development and stability in the long term. Twenty-four years after independence, it is time for the political system to fully embrace pluralism. This will require extensive reforms, starting with a revamping of how political parties are regulated, and a more tolerant approach towards the expression of dissent. The Special Rapporteur has no doubt, however, that Kazakhstan has the resources and human capital necessary to become a beacon of development and democracy, not just in Central Asia, but globally.

B. Trade unions

33. In June 2014, Kazakhstan adopted a new law on trade unions and gave the unions one year to comply with the new rules. At the time of writing the present report, the law had not yet been fully implemented.

34. Broadly speaking, the new law imposes mandatory affiliation of trade unions to regional or sectorial federations. It denies trade unions the right to freely form and join labour organizations of their choice. These new requirements fall short of international law, which stipulates that the right not to belong to an association is a core component of freedom of association. The Special Rapporteur recommends that the authorities revise the new law on trade unions to bring it in line with international standards as highlighted by the International Labour Office in its memorandum of technical comments on the draft law on trade unions of Kazakhstan.

35. During his visit, the Special Rapporteur was informed that some trade unions had been denied registration in previous years, including Zhanartu, which had reportedly been denied registration eight times since 2010; the independent union of journalists, which had reportedly been denied registration on technical grounds several times, most recently in November 2014; and Zhezkazgan, which had been denied registration three times in recent years. These organizations had reportedly yet to submit their documents to register under the new law.

36. The Special Rapporteur is concerned that the right to strike is limited by various preliminary mediation procedures that are mandatory before a strike can be deemed legal. The Labour Code also bans strikes in certain sectors, including the railway, transport and petroleum industries. It also entitles an employer to terminate employment contracts with employees who participate in strikes that are declared illegal. The new Criminal Code also created a new offence for "actions provoking continued participation in an illegal strike" (art. 402). The Special Rapporteur views the legal framework regulating strikes as more focused on limiting strikes than on facilitating the exercise of the right to freedom of association.

37. In May 2011, in a region known for its formidable exploitation of natural resources, workers of three companies operating in the oil sector started labour strikes (see paras. 72-89 below). In August 2011, a few months after the start of the first strikes, Natalia Sokolova, a union lawyer who defended the interests of oil strikers, was sentenced to six years in prison for "inciting social discord" after she called for a change to the system for calculating workers' salaries. The Special Rapporteur is baffled that such a vaguely worded

offence could be used against a union lawyer. Publicly speaking out about work conditions is in fact a core responsibility of unions; public debate about the issue, likewise, is a fact of life in a capitalist economy. Ms. Sokolova was released in March 2012, but the Special Rapporteur is concerned that her arrest and the arrest of other strike leaders contributed to inflame social tensions, ultimately leading to the tragic events of December 2011.

38. In Strategy Kazakhstan 2050, President Nazarbayev highlighted that one of the most serious challenges for Kazakhstan was that some "social groups have not joined the overall modernization process". Although the unemployment rate is said to be low in Kazakhstan, wealth disparities among the regions remain high, despite the fact that some efforts to address this are being made, for example, in the Zhanaozen region. Economic reforms are important in this regard, but may not be sufficient to ease social tensions when they erupt. Independent trade unions play a positive role in this regard as they can help the authorities build bridges with the population to identify needs and challenges, as well as solutions.

C. Public associations

39. The 1996 Law on Public Associations requires that all associations be registered with the State. The Special Rapporteur recalls that unregistered associations are protected by international law pertaining to freedom of association. Allowing the existence of unregistered associations is all the more essential as article 489 of the new Code on Administrative Offences criminalizes the management, participation in and financing of the activities of unregistered public associations.

40. During his visit, the Special Rapporteur was informed of certain public associations, such as Kok-Zhailau, an ecological group, and Amanat Aktau and Aktau Voice, which aimed to support the families of the victims of the Zhanaozen crisis, but which had recently been denied registration, owing to, according to the information provided by the Government, the discrepancies in the submitted documents. He encourages the authorities to proactively facilitate the formation of public associations, as they play a crucial role in advancing human rights and development.

41. The Special Rapporteur welcomes the fact that the Constitution of Kazakhstan prohibits the illegal interference of the State in the affairs of public associations, but he is seriously concerned that the same constitutional article refers to the illegal interference of public associations in the State's affairs. The new Criminal Code also warns associations from causing any illegal hindrance to the lawful activities of governmental bodies and from being involved in acts leading to considerable harm to the rights and legitimate interests of citizens or organizations or to the interests of the society (art. 403). The Special Rapporteur was not reassured by the fact that officials told him that this law only targeted political parties. He believes that the wording of article 403 is too vague, leaving room for broad and subjective interpretation. For example, it is not clear what constitutes "interference in the activities of State bodies", nor when interference would be considered "illegal". He strongly encourages the Government to revise the aforementioned provisions to ensure that they do not adversely affect members of public associations.

42. During his visit, the Special Rapporteur was inspired by the many human rights defenders and other members of civil society organizations he met and who are engaged in critically important work to strengthen the rule of law in Kazakhstan. In this context, the Special Rapporteur is deeply troubled by the case of Zinaida Moukhortova, a former member of the Bar Association, who has been repeatedly subjected to forced psychiatric treatment over the past four years. He finds it deeply disturbing that Ms. Moukhortova has been placed on numerous occasions in psychiatric detention after she urged the authorities to investigate possible corruption practices. He is also seriously concerned that numerous human rights defenders have decided to stop their human rights work after being arrested.

He underscores that human rights defenders play a crucial role in any country's realization of civil, cultural, economic, political and social rights, and he urges the authorities to take prompt appropriate actions to respect and protect their rights.

43. In the new Criminal Code, individuals identified as leaders of public associations may be subject to a separate category of offences with aggravated penalties. However, the definition of "leader" is so vaguely worded that civil society representatives fear that any member of a public association may be deemed a leader. The Special Rapporteur is unclear as to why leaders of public associations should be more dangerous than other individuals or why there must be stricter criminal punishments for them. He is unaware of any proven correlation between one's profession or position and criminality. Rather, this law appears simply to be a way to instil fear in civil society leaders who consider criticizing the Government or its policies. The Special Rapporteur urges the authorities to repeal any laws that discriminate against individuals on the basis of their affiliation with an association carrying out peaceful activities.

44. The Special Rapporteur commends the Government's creation of a Consultative Advisory Body or Platform for Dialogue on Human Dimension with non-governmental organizations, working notably on recommendations to the Government and Parliament. Organized under the Ministry of Foreign Affairs, the consultative advisory body is composed of various types of organizations, including groups working on human rights issues and groups that are known to be critical of the Government. Civil society's involvement in the State's decision-making process is an important component of pluralism and democracy and can only benefit Kazakhstan. The Government has reportedly adopted 168 of the recommendations of the body, which signals the opening of a space for dialogue. However, the Special Rapporteur urges the Government not only to adopt technical recommendations but also to embrace those recommendations that address systemic shortcomings.

45. The Special Rapporteur is concerned that a new grant-making mechanism — which is being promoted by the consultative advisory body and, at the time of drafting the present report, is supported by the Minister for Culture and Sports — may fall short of international human rights standards. Article 6 of the draft law on the introduction of changes and addenda to certain legislative acts of Kazakhstan pertinent to the activity of non-governmental organizations proposes the establishment of an operator to allocate grants to public associations and to monitor the implementation thereof". The responsibility of allocating all grants — public and private — to public associations may give the operator the power to control the entire sector. The Special Rapporteur strongly recommends that the draft law be limited to applications for State grants. State bodies should not be in a position to allocate private, international or foreign funds to public associations. Such arrangements create an unacceptable risk of subjective and arbitrary allocation of funds. The Special Rapporteur also recommends that the operator body be guaranteed independence, for instance, by including representatives of civil society in its composition.

D. Religious associations

46. Religious pluralism is a distinct characteristic of Kazakh society, and both the State and the country's people should be justifiably proud of this inclusive tradition. However, the Special Rapporteur remains concerned at numerous legal provisions that go too far in limiting the right to freedom of association in a religious context. The Special Rapporteur endorses the recommendations pertinent to his mandate put forward by the Special Rapporteur on freedom of religion or belief, who undertook an official visit to Kazakhstan in 2014 (see A/HRC/28/66/Add.1). More specifically, the Special Rapporteur on the rights to freedom of peaceful assembly and of association shares the concerns of the Special

Rapporteur on freedom of religion or belief about the compulsory re-registration requirements stipulated in the 2011 Act on Religious Activities and Religious Associations. He agrees that registration should not be mandatory and that unregistered communities should be able to operate free from discrimination or intimidation.

47. Under the Act, religious groups are required to re-register within a specified time frame (i.e. one year) in order to obtain the status of a registered religious association at the national, regional or local levels. The registration of religious groups at the national level requires membership of at least 5,000 individuals; registration at the regional level requires 500 members; and registration at the local level calls for a minimum of 50 members. Only Sunni Muslims, the Russian Orthodox Church and the Catholic Church have been registered at the national level, while other communities have been recognized in particular regional or local territories only. In the absence of registration, religious groups are effectively banned from exercising any collective religious functions. Members, meanwhile, may face administrative sanctions if they routinely practice their rituals, even in private homes — a fact that government officials confirmed during the Special Rapporteur's visit. In order to ensure compliance with international standards, the Special Rapporteur recommends that the authorities seek assistance from the Special Rapporteur on freedom of religion or belief, the Council of Europe Venice Commission and the Kazakh Constitutional Council. The Special Rapporteur welcomes the formation of an advisory group involving representatives of religious associations and government bodies to develop proposals on making further improvements to the legislation.

48. Government officials told the Special Rapporteur that such strict regulation of religious groups was necessary to protect society against extremism, highlighting that at least 300 individuals from Kazakhstan had gone to fight for Islamic State in Iraq and the Levant in Iraq and the Syrian Arab Republic. The Special Rapporteur agrees that extremism is a serious concern. However, he underscores that extremism is more likely to grow in circumstances where there are vast socioeconomic disparities and little space for individuals to express their grievances. Extremism most often appeals to those who are desperate, and the Government should be cautious that its policies do not contribute to fostering such desperation. Banning peaceful religious groups is likely to do just that.

49. Officials informed the Special Rapporteur that the Act on Religious Activities and Religious Associations might be amended in the future, but that there was currently a need for greater transparency from religious organizations. The Special Rapporteur believes that criminal groups will always find ways to circumvent transparency requirements and that the Act on Religious Activities and Religious Associations is unlikely to make a significant contribution in limiting extremism. He also believes that extremist groups are best tackled through the Criminal Code, not by a law on religious activities and religious organizations. While combating criminal activities is one of the core functions of a State, the Special Rapporteur warns against any counter-extremism and counter-terrorism measures that may have an adverse impact on freedom of association.[2]

50. Finally, the Special Rapporteur is concerned at the requirement for individuals carrying out religious functions with some degree of public visibility to register as "missionaries". Specifically, the Special Rapporteur was informed that the Act on Religious Activities and Religious Associations had had adverse effect on Jehovah's Witnesses, who until the adoption of the legislation had reportedly not experienced major difficulties in enjoying their rights to freedom of association and of religion or belief. The Special Rapporteur wishes to highlight the case of the representative of the Christian Centre of

[2] See the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/61/267).

Jehovah's Witnesses in Kazakhstan, who is a Russian national living in Kazakhstan for more than 10 years. In November 2013, he was charged with illegal missionary activity after he participated in a weekly peaceful religious meeting of Jehovah's Witnesses. The Special Rapporteur has been informed about several other examples of individuals subjected to severe fines and seizure of documentation for unregistered "missionary activity".

51. Officials told the Special Rapporteur that Jehovah's Witnesses do not always enjoy the support of all segments of society. However, this can never be a justification for limiting their rights under international law. The Special Rapporteur finds it contradictory to depict them as being isolated from the society, while at the same time preventing them from gathering and publicly speaking about their religious beliefs to relatives, friends or neighbours. He emphasizes that it is the duty of State authorities to proactively protect all individuals against any form of stigmatization or discrimination and to ensure that everyone enjoys his or her rights and freedoms. He strongly encourages the authorities to meet with representatives from Jehovah's Witnesses and any other religious groups to discuss ways to ensure they enjoy their rights.

III. Freedom of peaceful assembly

A. Exercising the right to freedom of peaceful assembly

1. Legislation

52. The right to peacefully assemble, hold meetings, rallies and demonstrations, street processions and pickets is guaranteed by the Constitution. However, in practice, the Government's approach to regulating assemblies renders that right meaningless. The 1995 Law on the Procedure for Organizing and Holding Peaceful Assemblies, Meetings, Marches, Pickets and Demonstrations requires that representatives of labour collectives, public associations or separate groups of citizens of Kazakhstan who reached the age of 18 seek prior permission from local authorities at least 10 days before the date of the gathering. Those requirements do not comply with international standards, which provide that no authorization should be required to assemble peacefully and that everyone has the right to freedom of peaceful assembly and of association (Human Rights Council resolution 15/21).

53. Furthermore, the law provides that the *maslikhat* and *akhimat*, the local representative and local executive authorities, respectively, have the power to designate specific sites where authorized assemblies can be held. Designation of these sites, usually located in remote areas, prevents organizers and participants from choosing venues they consider the most appropriate to express their aspirations and grievances.

54. During his visit, the Special Rapporteur visited Sari Arka square, which is the only site in Almaty where gatherings are allowed. The square is located about seven kilometres from the city centre, thus depriving demonstrators from the opportunity to express their views and opinions within sight and sound of their target audience, for example, government officials or fellow citizens in the areas of town with the highest density of people. The Special Rapporteur is gravely concerned that in a city of about 1.5 million inhabitants, the only designated place for assemblies is slightly bigger than a football pitch and is located in a relatively distant residential area.

55. In these conditions, it is not surprising that 324 out of 497 assemblies recorded between 2012 and 2014 were deemed "unsanctioned", according to figures provided by the Ministry of Justice. Figures provided by the Government also show a decrease in the

number of requests for holding assemblies over the past few years, especially in the field of civil and political rights. Officials in Aktau reported that no requests for assemblies were received in 2013 and 2014.

56. Proceeding with an unauthorized assembly can carry significant criminal consequences. Article 400 of the new Criminal Code imposes penalties for participation in "illegal" assemblies "resulting in serious harm to the rights and interests of citizens". Although those penalties have been reduced under the new Criminal Code, they remain disproportionately severe and can include the deprivation of liberty.

57. The Criminal Code also forbids providing "assistance" to "illegal" assemblies, including by "means of communication". The Special Rapporteur believes that this provision unduly limits the rights to freedom of peaceful assembly, association and expression, by potentially making it a crime to promote a protest event. Indeed, it appears that the provision is aimed at preventing activists from using social media and other communication tools to organize. For the same reasons, the Special Rapporteur is concerned at amendments to the Law on Communications, adopted in April 2014, which grants the Prosecutor's Office the power to suspend the operation of a network, including the Internet, without a court order.

58. The Special Rapporteur emphasizes that, while the right to freedom of peaceful assembly may be subject to certain limitations under international human rights law, such limitations must be exceptions and that cannot undermine the essence of the right. In his meetings with government officials, the Special Rapporteur found a repeated overemphasis on restrictions rather than the rights themselves. In rationalizing the numerous restrictions on assemblies, authorities frequently cited traffic issues and the need to protect "the rights of others". Government officials also told the Special Rapporteur that limitations to peaceful assembly were necessary in order to prevent massive unrest and cited the recent events in Ukraine as an example. The Special Rapporteur finds this justification unconvincing. The local political, economic and social context in Kazakhstan is vastly different.

59. The Special Rapporteur believes this is a misconstruction of the concept of human rights. Although certain restrictions are allowed under paragraph 4 of Human Rights Council resolution 15/21, the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights provide a clear framework for the authorized limits under international human rights law. Fundamentally, the scope of a limitation referred to in the Covenant shall not be interpreted so as to jeopardize the essence of the right concerned and shall be interpreted strictly and in favour of the rights at issue (see E/CN.4/1985/4, annex, paras. 2-3). In this context, the Special Rapporteur underlines that the right to peaceful assembly must not be subject to prior permission from the authorities, but at best by a notification procedure whose rationale is to ensure police protection to demonstrators and bystanders.

60. By specifying that authorized assemblies can only be held at specific designated sites and following the grant of permission from the State, the Special Rapporteur believes that the right to freedom of assembly is treated as a privilege or a favour rather than a right. Although in limited circumstances, for a certain period of time, the right to peaceful assembly may legitimately be restricted in certain locations, prohibiting assemblies in all locations but one designated area violates international human rights law.

61. Indeed, in November 2014, the Human Rights Committee found that Kazakh law had violated the right to peaceful assembly in the case of Bakhytzhan Toregozhina and ruled that the Government was under the obligation to review its legislation, in particular the Law on the Order of Organization and Conduct of Peaceful Assemblies, Meetings, Processions, Pickets and Demonstrations (see CCPR/C/112/D/2137/2012, annex, para. 9).

The Special Rapporteur encourages the Government of Kazakhstan to promptly and effectively implement this decision, and every other view from treaty bodies that form part of the human rights machinery.

62. The Special Rapporteur echoes the findings of the Human Rights Committee and notes that the Government has admitted on multiple occasions that the Law on Assemblies falls short of international standards. In 2007, for example, the Human Rights Commission, a consultative body under the President, concluded in its baseline report on human rights in Kazakhstan that the 1995 Law had failed to comply with international standards. Among other things, it highlighted the fact that the law did not differentiate between participants in a gathering and monitors or passers-by, often resulting in the arrest of the latter.

63. In 2010, on the occasion of the universal periodic review of Kazakhstan, the authorities committed themselves to making efforts to speedily draft and implement the new law on the right to assembly with fewer demands regarding prior registration and fewer requirements (see A/HRC/14/10, para. 97). That laudable commitment was reiterated in the framework of the 2014 universal periodic review of Kazakhstan, when authorities announced that a policy framework for a new law on peaceful gatherings and rallies was being drafted by the relevant State authorities with the participation of civil society (see A/HRC/WG.6/20/KAZ/1, para. 120). Ahead of the Special Rapporteur's visit, the Ministry of Justice had prepared a report stating that the Government had taken a decision to develop a draft law on amendments to certain legislative acts on ensuring security during mass sports, cultural entertainment and other public events.

64. The Special Rapporteur is encouraged by these developments, but believes that the promised reforms need to be approached with a greater sense of urgency. He notes, for example, that, during his visit, no one in the Government was able to provide an update on the status of the amendments to the Law on Assemblies.

65. He fears that the heavy-handed regulation of peaceful dissent has contributed to a general decline in open civic participation, as exemplified by the decrease in the number of applications to hold an assembly. This creates an increased impression that underlying discontent may fester and become ripe for exploitation by extremist ideologies. He recalls that the right to freedom of peaceful assembly is also crucial because it gives people a peaceful outlet to air their grievances. Indeed, for this reason, it is a critical guarantor of social peace and cohesion.

66. The Special Rapporteur thus encourages the authorities to consider a complete overhaul of its approach to regulating peaceful assemblies, starting by repealing the requirement of prior authorization and by allowing assemblies to take place in areas other than the designated "protest spaces". The Special Rapporteur reiterates that he is at the disposal of the authorities for any assistance they may require in the drafting of a new law.

2. Practice

67. During his visit, the Special Rapporteur learned that dozens of individuals had planned to stage peaceful assemblies from 24 to 27 January 2015 in 10 separate locations. In nine cases, authorities did not allow participants to hold assemblies in the locations of their choice; they were permitted to proceed only in authorized venues. Organizers of the tenth assembly eventually decided not to hold it. The Special Rapporteur also received reports that some participants of the planned protests had been subjected to "preventive detention".

68. On occasion, authorities' strict adherence to the law's wide-ranging regulation of peaceful assemblies has led to preposterous situations. For instance, police have used force on multiple occasions to break up "one-person protests" — often from the Antigeptil group, an ecological movement. On 2 February 2015, a peaceful individual attempting to submit a

petition in support of the closed *ADAM Bol* newspaper was arrested, reportedly for breaching the Law on Assemblies. On 6 October 2013, a race organized at a local stadium in Almaty by dozens of peaceful individuals under the slogan "Kazakhs for sport" was broken up by police because the gathering had not been authorized. On 31 October 2013, a Halloween costume party organized through social media by a group of 15 peaceful students in Pavlodar was dispersed on the same grounds. On 5 March 2014, force was used against young children and their parents peacefully demonstrating against forced evictions in Astana. These are just a few of the examples that were brought to the attention of the Special Rapporteur. In all of the cases, the Special Rapporteur considers authorities' actions violated international law and standards.

69. Although officials assured the Special Rapporteur that local authorities did not discriminate against assemblies on the basis of their content or message, reports from civil society indicate otherwise. Requests to hold assemblies reportedly receive different treatment depending on their content; protests over potentially controversial issues are less likely to be authorized. For instance, a peaceful demonstration in Astana against the proposed deportation of opposition leader Mukhtar Ablyazov from France to Kazakhstan was rapidly broken up by police on 2 September 2013. A month later, a protest calling on French authorities to keep Mr. Ablyazov in prison until the official extradition request by Kazakhstan had been examined — a stance favoured by the authorities — took place without any police interference.

70. The Special Rapporteur is also concerned about the use of "preventive detention" or "preventive warning". Government officials justified such measures by saying that they were used as a public service to "inform" citizens about the law. However, in the Special Rapporteur's view, this is a form of intimidation. It is also a blatant violation of the right of peaceful assembly, as well as the rights to security and liberty.

71. Despite numerous challenges in the area of the right to freedom of peaceful assembly, the Special Rapporteur notes with appreciation that violence and excessive use of force at protests is rare in Kazakhstan, with the dramatic events of Zhanaozen standing out as an obvious exception. For example, tear gas seems to have rarely — if ever — been used during public assemblies in Kazakhstan. An official order, meanwhile, prohibits the apprehension of assembly organizers at the place where an assembly is taking place to prevent agitation, although repeated forcible removal of assembly participants into police minivans was brought to the Special Rapporteur's attention.[1] This seems to illustrate a high degree of responsibility by all sides, which the authorities should build on to further widen the democratic space.

B. Zhanaozen crisis

72. The Special Rapporteur visited the city of Zhanaozen, which was the epicentre of a seven-month-long strike by oil workers lasting from May to December 2011. On 16 December 2011, clashes between demonstrators and police resulted in numerous deaths and casualties. Two official statements were issued in the weeks following the events. According to the statement delivered by the Prosecutor General on 25 January 2012, "64 persons received gunshot wounds, 14 individuals died — the deaths of two of them not being related to the violence — and 35 policemen were wounded as a result of the clashes". According to the second statement issued by the Prosecutor General, on 22 February 2012, at least "12 individuals died of gunshot wounds, two persons died from the injuries they

[1] See Minister of Internal Affairs order 665 of 6 December 2000.

sustained, one person died from burns suffered during the pillage of the Sulpak trade centre and one person died from shotgun wounds that was unrelated to the riots".

73. The strike began in May 2011, a few weeks after the presidential elections, and was led by oil and gas workers from Karazhanbasmunai JSC, Ozenmunaigas and Ersai Caspian Contractor LLC. The workers demanded an increase in pay and a halt to company interference in trade union activities. Within weeks of the start of the strike, local courts declared the action illegal on the grounds that assemblies were being held at hazardous facilities in violation of the law. Hundreds of strikers were dismissed for participating in these "illegal" — although, it should be emphasized, entirely peaceful — assemblies as a result. The strike continued, however, along with public assemblies in Zhanaozen's main square.

74. In December 2011, local authorities decided to organize independence day festivities on the same square where workers had been demonstrating for several months. On 16 December 2011, which is when Kazakhstan celebrates its independence, altercations between a group of demonstrators and festivalgoers erupted. Police reportedly intervened and moved the strikers into a corner of the square, before turning back. Shortly thereafter, a group of young men, some wearing oil company jackets, reportedly began to destroy some equipment related to the independence day celebration. Several facilities were allegedly set on fire.

75. In response, police began firing live ammunition into the crowd. In a video made available on social media,[1] police can be seen firing their weapons indiscriminately, hitting unarmed demonstrators in the back and fleeing the square.

76. The Special Rapporteur discussed the Zhanaozen crisis with the Office of the General Prosecutor, the relatives of those who had lost their loved ones and with numerous workers who had been demonstrating on 16 December 2011. He was left with the distinct and troubling impression that, more than three years after this tragic crisis, the wounds had not healed.

77. The Special Rapporteur commends the Government for its efforts to increase resources in the region, which could help to mitigate some of the underlying reasons for the 2011 strikes. He notes that most of the workers who were on strike had been gainfully employed at the time of the visit. He also notes that practically all those who were convicted for mass unrest (see para. 84 below) have now been released on parole. However, there is more that needs to be done.

78. One of the most important steps towards healing involves finding out what exactly happened in Zhanaozen. To this day, there is still conflicting information about the events of 16 December 2011 — in particular the actions of the workers, possible agents provocateurs and police action. It is not clear who participated in the violence, what police forces did to separate violent individuals from peaceful demonstrators and bystanders commemorating independence day, what circumstances led police forces to resort to lethal force and who ordered the police to use lethal force.

79. In the absence of a clear understanding of the sequence of events, the Special Rapporteur joins the call of OHCHR for an independent international inquiry into the crisis. Such an independent investigation would make it possible to comprehensively shed light on the crisis, restore trust in the justice system and allow the victims to heal, including through moral compensation.

[1] https://www.youtube.com/watch?v=gX8I2JzFIpo

80. The inquiry should also include an investigation of what happened in the city of Shetpe, located a few kilometres away from Zhanaozen, where clashes on 17 December 2011 between police, workers and residents led to the death of one person. Dozens of others were wounded by gunfire. Workers and residents were reportedly demanding the restoration of communications to Zhanaozen, as telecommunications had reportedly been cut off and several websites blocked in the days following the clashes there.

81. Following the completion of the inquiry, the Government must hold individuals, including officials, accountable for their actions in Zhanaozen. Although five police officers have been convicted for abuse of power following the events of 16 December, none of them have been convicted for killing protesters. In fact, the vast majority of the police officers on duty that day continued to perform their duties.

82. Likewise, there has been a conspicuous absence of charges against high-level officials involved in supervising the police response. This is troubling, as President Nazarbayev said on 21 December 2011 that the workers' demands were legitimate.[5] According to reports,[6] prosecutors said at the trial against police officers that the police should have used alternative methods to respond to the mass disturbances.

83. The Special Rapporteur was informed that a special fund had been established by the Oblast of Mangystau to compensate survivors of the Zhanaozen events. A number of those who were injured in 2011, including bystanders, have not been able to find employment since. The Special Rapporteur calls on the Government of Kazakhstan to ensure that the ratification of the Convention on the Rights of Persons with Disabilities provides victims with additional opportunities to seek redress.

84. A few days after the violence, civil society organizations reported that as many as 700 persons had been arrested. While the vast majority of them were released in the following days, 37 oil workers were charged with various crimes, including "organizing and participating in mass unrest". Among them was strike leader Roza Tulataeva, who was paroled in November 2014. The Special Rapporteur notes with appreciation the steps taken by the authorities to parole the convicted workers and to provide them with job opportunities to ensure their social rehabilitation and reintegration. However, he is gravely concerned that, during the trial, almost all of the 37 defendants fully or partially retracted their testimonies after claiming that they had been physically and psychologically abused by police in detention. The allegations of mistreatment included severe beatings, suffocation and threats to harm family members, all with the apparent aim of coercing testimony against themselves or others. In fact, most of the defendants who had pleaded guilty later alleged torture or other mistreatment. On 20 December 2011, one of the detainees, Bazarbai Kenzhebaev, who had been arrested four days earlier, died from injuries apparently sustained in custody.

85. Many of the victims and survivors with whom the Special Rapporteur met in Zhanaozen expressed concerns about risks of reprisals for meeting with him. Indeed, the above-mentioned surveillance incident in Aktau occurred the day before a meeting with sources to discuss the 2011 events in Zhanaozen.

86. The Government formed a task force to investigate allegations of torture and ill-treatment of those detained, but it was comprised of representatives from the Ministry of Interior and the General Prosecutor and thus lacked the independence necessary to conduct

[5] See www.kt.kz/rus/state/kulibaev_budet_osvobozhden_ot_dolzhnosti_glav_fnb_samrukkazyna_1153549470.html (article available in Russian only).

[6] See http://tengrinews.kz/kazakhstan_news/prokuror-politsevskie-mogli-oboytis-dubinkami-podavlenii-213066/ (article available in Russian only).

a proper investigation. Indeed, the panel determined that no crimes had been committed against the detainees and, as a result, no one has ever been prosecuted for the alleged torture. Although officials repeated that the trial of workers had been carried out in a transparent manner, this is not sufficient to meet international standards related to the right to a fair trial, which require thorough, independent and impartial investigations into all allegations of ill-treatment.

87. The recent adoption by Kazakhstan of a zero-tolerance policy towards torture and the implementation of a national preventive mechanism are commendable. The Special Rapporteur urges the Government to implement them retroactively and to re-examine the convictions of the Zhanaozen workers. This will ensure that their convictions were not made on the basis of coerced evidence and that the alleged perpetrators are brought to justice.

88. Separately, the Special Rapporteur is disturbed that most of those convicted in Zhanaozen had been known to be the most active organizers during the 2011 strikes. They were engaged in legitimate associational activity and should not be blamed for the crisis.

89. The tragic events in Zhanaozen had a profound negative impact on the perception of peaceful protests in Kazakhstan, sparking a wave of legal reforms that seemed driven by the overriding aim of prohibiting assemblies whenever possible. It is also crucial to change public perception of freedom of peaceful assembly in general, and of Zhanaozen strikers in particular. As demonstrators were on occasions depicted as criminals, alcoholics or drug addicts by some media outlets, authorities have a significant role to play to protect those exercising their rights to freedom of peaceful assembly and of association from any form of stigmatization, intimidation, threats or defamation. In 2011, opportunities to engage in dialogue between strikers, company leaders and State representatives were missed. It is therefore crucial that the authorities restore trust and mutual understanding so as to avoid repeating mistakes from the past. The Special Rapporteur acknowledges that facilitating protests can be challenging but urges the Government to meet these challenges head on, with the same energy and effort that Kazakhstan has used to approach its economic development since 1991.

IV. Conclusions and recommendations

90. **During the Special Rapporteur's visit, authorities repeatedly made reference to the rule of law to justify restrictions to the enjoyment of freedom of peaceful assembly and of association. However, in practice, the Special Rapporteur believes that the Government's policies seem more driven by an adherence to "rule by law".**

91. **The Special Rapporteur recalls that the law is an expression of the peoples' will and is therefore meant to serve the people. The rule of law implies that individuals are free to enjoy their human rights without prior authorization from State authorities. Otherwise, the rule of law principle may turn into an arbitrary "rule by law" norm, which is likely to erode the essence of these rights. The Special Rapporteur urges the Government of Kazakhstan to pay attention not only to the technical requirements of its human rights obligations, but also to the spirit of these obligations. Although the rights to freedom of peaceful assembly and of association are not absolute, the essence of these rights cannot be jeopardized by State-imposed limitations that are neither legitimate nor proportionate to the aim pursued. Restrictions must be strictly defined and narrowly interpreted in order to comply with the international human rights law.**

92. **The Special Rapporteur is concerned that the State's current approach to the rights to freedom of peaceful assembly and of association has had an adverse effect on public discourse. Opposition or dissenting views are frequently seen as a source of**

possible instability, rather than as a means to strengthen the rule of law. Kazakhstan has come a long way since 1991. Focus has been put on economic reforms to empower people, but the younger generation, who did not live through the harsh Soviet period, appear to have greater aspirations. It is natural that they want to take ownership of their society by participating in public affairs. Authorities pointed out that Kazakhstan has enjoyed rapid economic development, which in times of financial difficulties and geopolitical changes may risk leading to social turmoil. These are legitimate concerns that can only be addressed by ensuring that laws are in compliance with international human rights standards and widening the democratic space. An enabling environment for civil society is a priceless means to allow authorities to continue pursuing ongoing reform processes with greater support from the population but also to build robust institutions with representative, responsive and accountable governance that can protect the society against tumult. Any change is a challenge. Reforms require some dose of political courage and will, but the Special Rapporteur is convinced that Kazakhstan is capable of advancing the rights to freedom of peaceful assembly and of association in a short period of time.

93. The Special Rapporteur invites the authorities to disseminate the present report widely, so that it can serve as a springboard for a public dialogue on expanding civic space. The plan of Kazakhstan to develop a human rights action plan until 2020 to implement the universal periodic review's recommendations, taking into account the view of civil society, should outline the necessary actions to be taken to bring national laws and practices in line with the different recommendations of international human rights mechanisms in a holistic manner.

94. Although the present report highlights some shortcomings regarding the rights to freedom of peaceful assembly and of association, the Special Rapporteur wishes to reiterate that his review and recommendations are offered in a spirit of constructive dialogue. Kazakhstan has made remarkable progress in the economic realm since independence, and the Special Rapporteur firmly believes that it is capable of replicating this progress in the field of the rights to freedom of peaceful assembly and of association. The Special Rapporteur reiterates that he remains at the disposal of the authorities in helping them achieve these goals and is willing to conduct a follow-up mission and provide technical assistance in the drafting of new laws or amendments.

95. The Special Rapporteur makes the following general recommendations:

(a) Recognize in law and in practice that the rights to freedom of peaceful assembly and of association play a decisive role to foster pluralism, tolerance and broadmindedness, where opposition, minority or dissenting views or beliefs are respected and protected;

(b) Ensure that no one is criminalized for exercising the rights to freedom of peaceful assembly and of association or subject to threats or use of violence, harassment, persecution, intimidation or reprisals;

(c) Ensure that any limitations on the rights to freedom of peaceful assembly and of association have a legitimate aim, are defined by law, are proportionate to the aim pursued and are necessary in a democratic society;

(d) Ensure that victims of violations and abuses of the rights to freedom of peaceful assembly and of association have the right to an effective remedy;

(e) Implement the recommendations pertinent to freedom of association and of peaceful assembly, including the views adopted by the United Nations treaty bodies in individual communications.

96. **Concerning the right to freedom of association, the Special Rapporteur calls on the relevant authorities:**

(a) **To strictly and narrowly define the offence of incitement to discord (art. 174 of the new Criminal Code) to bring it in line with international human rights law and avoid any adverse effects on the rights to freedom of peaceful assembly and of association;**

(b) **To amend the Law on Political Parties so as to increase citizens' opportunities to create political parties, including by decreasing the number of required individuals to form a political party and by specifying a limited time frame for registration to be examined by an independent body;**

(c) **To ensure individuals can form and join trade unions of their choice, including by eliminating compulsory state registration;**

(d) **To ensure that the Law on Public Association allows for the free operation of unregistered associations, and that any amendments concerning access to funding do not jeopardize the independence of associations, including by limiting the proposed new grant mechanism to State funds only;**

(e) **To repeal the offence of "illegal interference of members of public associations with activities of State bodies" (art. 403 of the new Criminal Code);**

(f) **To revise the Act on Religious Activities and Religious Associations to ensure religious organizations can be formed and can operate freely without the State's prior approval.**

97. **Concerning the right to freedom of peaceful assembly, the Special Rapporteur calls on the relevant authorities:**

(a) **To adopt within a specific time frame a new law on public assembly in compliance with international human rights law, with the participation of civil society. The new law should eliminate the State's prior approval to hold an assembly, strictly and narrowly define the limited places where assemblies cannot take place, explicitly specify that public order and safety is the State's duty only and remove criminal liability for "participation in an illegal assembly" (art. 400 of the Criminal Code);**

(b) **To implement the rights to security, to liberty and to be presumed innocent until proved otherwise, including by ensuring that no one is subject to "preventive detention" for the exercise of the right to peaceful assembly;**

(c) **To ensure law enforcement officials apply non-violent means before resorting to force and, when force is unavoidable, exercise restraint in proportion to the seriousness of the offence and to objectives pursued with due respect to human lives;**

(d) **To launch an international independent investigation into the tragic crisis in Zhanaozen and Shetpe with a view to bringing perpetrators of human rights violations to justice and to providing redress to victims;**

(e) **To consider granting Vladimir Kozlov early release for "good behaviour", as per national legislation;**

(f) **To re-examine the conviction of the Zhanaozen oil workers who claim to have been forced to confess as a result of torture or ill-treatment.**

98. **In addition, the Special Rapporteur calls on the relevant authorities:**